



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07489/2016

THE IMMIGRATION ACTS

**Heard at Newport
On 28 February 2018**

**Decision & Reasons Promulgated
On 22 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MASTER S O
(ANONYMITY DIRECTION MADE)**

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. L. Profumo, counsel instructed by Migrant Legal Project

For the Respondent: Mr. K. Hibbs, Home Office Presenting Officer

ERROR OF LAW DECISION AND REASONS

1. The Appellant is a national of Afghanistan, born on 1.1.01. He arrived in the United Kingdom on an unknown date but made an asylum claim on 6 August 2015 on the basis of a fear that he would be taken by the Taliban. This application was refused in a decision dated 26 April 2016 and he appealed against that decision.

2. The appeal came before First tier Tribunal Judge Ghani for hearing on 8 June 2017. In a decision and reasons promulgated on 18

July 2017, the Judge dismissed the appeal. An application for permission to appeal to the Upper Tribunal was made, in time, on 30 July 2017. The grounds in support of the application asserted that the Judge had erred materially in law:

(i) in failing to consider country guidance cases, in particular: AA (unattended children) Afghanistan CG [2012] UKUT 16 and KA (Afghanistan) [2012] EWCA 1014 and his claim for asylum based on his membership of a particular social group *viz* children;

(ii) in failing to give reasons for his findings in particular that the Appellant is an economic migrant;

(iii) in failing to give any consideration to the reception conditions in Afghanistan should the Appellant be returned as a child;

(iv) in failing to give little or any weight to the expert opinion of Tim Foxley, which addressed the plausibility of the Appellant's account; risk on return and internal relocation and in failing to consider the psychiatric evidence of Dr Law.

3. In a decision dated 10 October 2017, Resident Judge Zucker granted permission to appeal on the basis that it was arguable that the Judge ought to have considered whether the Appellant was entitled to international protection as a refugee by reason of his youth by reference to the country guidance cases. Judge Zucker also stated:

"Though not specifically raised in the grounds, I am concerned that this judge maybe allowing irrelevant considerations to affect his credibility findings and in particular, I refer to the judge's reference to migration statistics relating to Afghan youth. Each case should be determined on its own merits. There is a risk in this case of a suggestion of prejudice."

Hearing

4. At the hearing before the Upper Tribunal, Mr Hibbs very fairly accepted that the findings at [9] were arguably flawed due to an absence of sufficient reasons for reaching negative credibility findings. He further accepted that the finding at [10] in respect of the psychiatric evidence and the Appellant's mental health was also flawed.

5. I agree that Mr Hibbs was correct to make these concessions. I find that the decision is vitiated by errors of law in that the Judge failed to engage sufficiently with the relevant jurisprudence in respect of Afghan minors and with the expert country and medical evidence. In these circumstances it was not necessary to hear from Ms Profumo.

Decision

6. In light of the express acceptance by the Respondent that the decision of the First tier Tribunal contains material errors of law and bearing in mind the terms of the grant of permission to appeal I find the decision is vitiated by material error of law. The decision of First tier Tribunal Judge Ghani is set aside and the appeal is remitted for a hearing *de novo* before the First tier Tribunal.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

22 March 2018